UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
DOCUMENT NO. 454-98-3974-D2
Issued to: Stanley M. WILLIAMS

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2384

Stanley M. WILLIAMS

This appeal has been taken in accordance with 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 21 July 1983, an Administrative Law Judge of the United States Coast Guard at Houston, Texas revoked Appellant's mariner's document upon finding proved the charge of misconduct. The specification found proved alleges that while serving as oiler aboard the S/S INGER, under authority of the above captioned document,Appellant did, on or about 29 March 1983 "wrongfully have in [his] possession certain narcotics, to wit: Marijuana."

The hearing was held at Houston, Texas, on 23 May 1983.

At the hearing, Appellant elected to act as his own counsel and entered a plea of not guilty to the charge and specification. Appellant was assisted by his father.

The Investigating Officer introduced in evidence six exhibits, and the testimony of two witnesses.

In defense, Appellant offered in evidence his own testimony and the testimony of two witnesses.

After the hearing, the Administrative Law Judge rendered a decision in which he concluded that the charge and specification had been proved. He served a written order on Appellant, revoking Merchant Mariner's document No. 454-98-3974-D2 and all other valid licenses and documents issued to him.

The entire decision was served on 22 July 1983. Notice of appeal was filed on 31 August 1983 and will be considered timely. The delay in filing was caused by Hurricane Alicia. This Appeal was perfected in a timely manner on 30 April 1984.

FINDINGS OF FACT

On 28 March 1983 Appellant was assigned by the Seafarers International Union the S/S INGER. That evening a party was held

in his honor at the home of his father.

A witness who was present at this affair testified that she placed a package of marijuana in the Appellant's suitcase. She stated the marijuana was just tossed in the suitcase. Further testimony concerned her usage of marijuana during the pervious 13 years, and her drinking a fifth of bourbon and smoking eight marijuana cigarettes that evening. The Administrative Law Judge found that her testimony was not credible.

Both the Appellant and his father stated that the suitcase had no key and could not be locked.

Between 1000 and 1100 on the following day, 29 March 1983, Appellant reported on board the S/S INGER in the port of Houston. Appellant reported to the First Assistant Engineer who assigned him to serve as oiler beginning at 12 noon. Appellant then asked for permission to go ashore and attend to some business. Before leaving the Vessel Appellant talked with the oiler he was to relieve. Appellant left his suitcase in a corridor aboard the S/S INGER.

At about 1030 that day a Customs Service team boarded the S/S INGER which had arrived in Houston from Haifa, Israel. A Customs Officer's narcotics dog "alerted" on a suitcase in a corridor aboard the vessel. The Officer unlocked the suitcase with a master key and found only clothing, a passport, and union card belonging to Appellant. His dog was still "alerted". The Customs Officer then brought his dog closer to the suitcase and the dog then "alerted" on the lining. The lining was opened and a bag containing marijuana and rolling papers was found. These items had been sewn inside the lining of the suitcase. The marijuana was found to weigh 9.5 grams. The Officer testified that based on his experience the substance was marijuana. A field test of the substance conducted at the hearing resulted in a positive reaction for the presence of THC.

At the time the marijuana was discovered, Appellant had not signed the Shipping Articles. The Master did not sign any crewmen on board at that time because he was about to be relieved by another Master.

Appellant returned to the S/S INGER at about 1145 on the day in question.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant urges that:

1. The experimentation exception in 46 CFR 5.03-4 denied his right to Due Process and Equal Protection of the Law.

2. The Administrative Law Judge erred in finding that Appellant is presumed to have knowledge of the marijuana in his possession.

3. The Administrative Law Judge erred in finding that the substance discovered in Appellant's suitcase was marijuana.

4. The Coast Guard has no jurisdiction over Appellant's license because he had not signed the shipping articles.

5. That the marijuana was seized in violation of Appellant's Constitutional rights and should have been excluded.

6. That the Administrative Law Judge erred in allowing the Investigation Officer to impeach the Appellant.

7. That the Administrative Law Judge erred by conducting, and permitting the Investigating Officer to conduct, improper questioning of witnesses as to collateral matters.

APPEARANCE: Walter J. Pink, Esquire, 4012 Old Spanish Trail, Houston, Texas, 77021.

I

Appellant claims that his Due Process and Equal Protection rights were denied in violation of the First, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States because 46 CFR 5.03-4 forced him to either plead not guilty or admit guilt, even if he is innocent, and attempt to establish experimental use. I do not agree

Appellant argues that maintaining his innocence could lead to revocation of his license while pleading guilty to experimental use could result in a lesser sanction. Appellant seriously misconstrues the nature of the experimental use provision in 46 CFR 5.03-4. This regulation sets out a factor in mitigation and may be raised by a respondent in any case where marijuana use is proved. Appeal Decision No. 1987 (BROWN). Experimental use may be established in any case regardless of whether the plea is guilty or not guilty. Appellant's license was not placed in greater jeopardy by exercising his right to make the Coast Guard prove it case.

A review of the record indicates that Appellant was informed

of the experimental us provision in 46 CFR 5.03-4 at the hearing on May 23, 1983. The record also reveals that Appellant no argument that his possession of marijuana was a result of experimentation. The Administrative Law Judge, therefore, had no reason to consider experimentation in mitigation of the sanction to be imposed. Experimentation may not be raised for the first time on appeal. Appeal Decision No. 1957 (DIAZ).

II

Appellant contends that there was no evidence that he had knowledge of the marijuana in his suitcase. From the facts in this case I cannot disagree with the Administrative Law Judge's finding that the Appellant possessed marijuana aboard the S/S INGER.

Appellant denied any knowledge of the marijuana. However, two Customs Officers testified that the marijuana was discovered sewn into a locked suitcase which also contained Appellant's passport and union card. The fact of possession raises a presumption of wrongful knowledge which requires the Appellant to satisfactorily explain the possession to the trier of fact. 46 CFR 5.03-3, Appeal Decision No. 1906 (HERNANDEZ), and Appeal Decision No. 2109 (SMITH). The Administrative Law Judge is free to reject Appellant's unsubstantiated claim of lack of knowledge. Appeal Decision No. 1906.

Not only was Appellant's assertion that he did not know the marijuana was in his suitcase unsubstantiated, but the testimony of three witnesses allows a contrary conclusion. Appellant's witness stated she threw the marijuana in the suitcase and denied having sewn it into the lining. The two Customs Officers testified that they found the marijuana sewn into the lining of the suitcase. The Administrative Law Judge could infer from this testimony that Appellant sewed the marijuana in the lining of his suitcase.

The choice as to what particular inference should be drawn depends upon the weight to be accorded the evidence in the case. Such questions of weight and credibility are for the Administrative Law Judge and unless the evidence relied upon was inherently incredible, his findings will not be set aside. See e.g., Appeal Decision No. 2333 (AYALA), Appeal Decision 2332 (LORENZ), Appeal Decision No. 2302 (FRAPPIER), AND Appeal Decision No. 1906 (HERNANDEZ). That the Administrative Law Judge chose to believe the Customs Officers' testimony and found Appellant's witness to not be credible is not clearly erroneous. It will, therefore, not be disturbed,

III

Appellant argues that the evidence was insufficient to support the finding that substance found in his suitcase was marijuana. I do not agree.

A Customs Officer with narcotics experience dating back to 1971 identified the substance as marijuana. This Officer's trained narcotics dog had originally detected the marijuana in Appellant's suitcase. That same Customs Officer field tested the substance at the hearing and obtained a positive reaction for the presence of marijuana. Appellant's own witness who had used marijuana for thirteen years said she put marijuana in the suitcase. That witness has grown marijuana and had smoked some of the same batch before she placed it in Appellant's suitcase. She expressed no doubts as to whether it was marijuana.

Appellant did not object to admitting the marijuana into evidence. He made no argument at the hearing as to whether it was marijuana. Such a factual question may not be raised originally on appeal. Any objection to the evidence or inference drawn from it has been waived.

Finally, a positive field test allows the inference that the substance is a narcotic. Appeal Decision No. 2252 (BOYCE). Since that inference was not rebutted by Appellant, the Administrative Law Judge properly found that the substance was marijuana.

IV

Appellant maintains that the Coast Guard had no jurisdiction over his document because he had not signed the S/S INGER's shipping articles. I disagree.

The Coast's jurisdiction under 46 U.S.C. 239 is not predicated on the Appellant's serving under Shipping Articles. Appeal Decision No. 1894 (SCULLY), and Appeal Decision No. 1906 (HERNANDEZ). The jurisdiction of the Coast Guard extends to acts of misconduct committed by one acting under the authority of a document. 46 CFR 5.01-30(a)(1). A mariner is acting under the authority of a document if the document is required by law or regulation, or is required in fact as a condition of employment. 46 CFR 5.01-35(a).

In this case Appellant: (1) sought maritime employment through the Seafarers International Union and was assigned by them to the S/S INGER; (2) reported aboard the S/S INGER with luggage and an intention of signing Shipping Articles; (3) reported to the First Assistant Engineer in the engine room and was assigned a watch; (4) requested, and received, permission to depart the vessel before is watch; (5) talk with the oiler he was scheduled to

relieve; (6) sought to be assigned quarters aboard; (7) left his luggage on board; and (8) departed the vessel and returned in time for his assigned watch. A document was required for a seaman aboard a vessel such as the S/S INGER. 46 U.S.C. 643. These circumstances support the Administrative Law Judge's determination that Appellant was serving under authority of his document.

V

Appellant argues that the evidence found in his suitcase was improperly seized in violation of his Fourth Amendment rights and should have been excluded. Since he raises this issue for the first time in his appeal, I may not consider it.See e.g., Appeal Decision No. 2184 (BAYLESS).

VI

Appellant claims that the Administrative Law Judge erred in allowing the Investigating Officer to impeach him. I do not agree.

Impeachment of any witnes, including a respondent, is specifically authorized by 46 CFR 5.20-130(a). The fact that the Administrative Law Judge allowed impeachment of Appellant is not, in and of itself, an error.

Appellant further contends that the Investigating Officer misquoted his testimony in an on the record discussion withAppellant's father. Appellant tstified during re-cross examination that he had never used marijuana aboard a vessel, and that marijuana was never found in his possession aboard a vessel. Upon further questioning by the Investigating Officer, Appellant tstified that he had been to jail, gone to court, and paid a $50.00 fine to the Customs Service for marijuana found in his room aboard the S/S JACKSONVILLE. Immediately thereafter, in a discussion with Appellant's father, the Investigating Officer asserted that Appellant had denied being arrested by the Customs Service. Although the Investigation Officer initially misquoted Appellant, he modified that characterization of the testimony 8 lines later and correctly quoted Appellant. Any prejudice to Appellant was cured by this immediate modification of the Investigation Officer's summary of the testimony. At most, this brief misquotation of Appellant was a harmless error.

The impeachment here was the difference between Appellant's statements that he had never possessed marijuana on a ship and that he had been fined for possession on board the S/S JACKSONVILLE. The evidence of impeachment is Appellant's statement, not the Investigating Officer's summarization of what Appellant said. That the Investigation Officer initially misquoted Appellant does not affect whether there was an inconsistency in the testimony.

VII

Appellant maintains that the Administrative Law Judge erred in permitting improper questioning of witnesses by the Investigating Officer as to collateral, immaterial or irrelevant matters. Appellant further argues that the Administrative Law Judge himself conducted an irrelevant and prejudicial examination of him. I disagree.

I note that Appellant provides no specific citations to the transcript or explanation as to what questions elicited collateral, irrelevant, prejudicial or immaterial evidence. The following is therefore a general discussion of the areas of the record to which Appellant refers.

The Investigating Officer questioned Appellant concerning his relationship witness. These questions were directly aimed at any interest or bias of Appellant's witness. Such evidence is relevant and material under 46 CFR 5.20-95(a) and was properly admitted by the Administrative Law Judge.

The Investigating Officer further examined Appellant about his prior use or possession of marijuana, if any, and whether he had ever been arrested or fined for possessing marijuana aboard a vessel.Questions concerning prior bad acts, previous offenses, or uncharged misconduct are not generally admissible because the prejudice of such questions outweighs the probative value of the answers. Fed. R. Evid. 404(b). However, where an Appellant claims to lack knowledge of this possession of narcotics, claims to lack the requisite intent,or claims his possession was mistaken or due to an accident, evidence of similar acts may be properly admitted. Fed. R. Evid. 404(b). See e.g., Andresen v. Maryland, 427 U.S. 463 (1976); U.S. v. Sinn, 622 F.2d 415 (9th Cirl. 1980) cert. den. 449 U.S. 843; and U.S. v. Francesco, 725 F.2d 817 (1st Cir. 1984)

Appellant disclaimed knowledge of the marijuana in his suitcase and a defense witness testified she placed it there. The question concerning Appellant being fine for possession of marijuana aboard another vessel would be admissible under Federal Rule of Evidence 404(b) for the purpose of contradiction his claimed lack of knowledge or lack of intent, or regarding the defenses of accident or mistake. the general rule that evidence of other crimes, wrongs or acts is not admissible to establish bad character applies in these proceedings. However, because the evidence concerned knowledge, intent and the absence of a mistake or accident, and because it would be admissible under the Federal Rules of Evidence, the Administrative Law Judge properly admitted it.

The Investigating Officer also questioned Appellant's witness as to her relationship with the Appellant, her conduct and activities on the night in question, her knowledge concerning marijuana, and whether she was at Appellant's house on the evening she allegedly placed the marijuana in his suitcase. This line of interrogation focused on her conduct relevant to the events in question, her ability to perceive those events, any bias on her part, and on her credibility. Her testimony was properly admitted by the Administrative Law Judge.

The Administrative Law Judge also directed questions at Appellant and his witness. The questions asked by the Administrative Law Judge addressed Appellant's suitcase, his actions on the dates in question and his relationship with other witnesses. The Administrative Law Judge also addressed similar

questions to the defense witness who testified she threw the marijuana in Appellant's suitcase. Since his questions concerned the facts in question and the character or credibility of the witnesses, they were relevant and material. Appellant's assertions are without merit.

CONCLUSION

The findings of the Administrative Law Judge are supported by substantial evidence of a reliable and probative nature. The hearing was conducted in accordance with applicable regulations. The sanction ordered is appropriate under the circumstances.

ORDER

The order of the Administrative Law Judge dated at Houston, Texas, on 21 July 1983, is AFFIRMED.

J.S. GRACEY
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D.C. this 27th day of February, 1985.